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1989

# The Carpet Barn; Kenneth MacQueen and Harla MacQueen v. Utah : Brief of Respondent

Utah Court of Appeals

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Clark W. Sessions; Sessions & Moore; Attorneys for Plaintiff-Appellants.
Stephen C. Ward; Assistant Attorney General; Jody K. Burnett; Anne Swensen Snow, Christensen and Martineau; Attorneys for Defendants-Respondents.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 89-0315 IN THE SUPREME COURT OF THE

STATE OF UTAH

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THE CARPET BARN, a Utah corporation; KENNETH MACQUEEN and HARLA MACQUEEN,

Plaintiffs,

vs.

STATE OF UTAH, by and through its Department of Transportation,

Defendants.

Case No. 880047

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# BRIEF OF RESPONDENT

---

Priority # 14(b)

Clark W. Sessions (2914)
SESSIONS & MOORE
400 First Federal Plaza
505 East 200 South
Salt Lake City, Utah 84102
Attorneys for Plaintiff-Appellants

Jody K Burnett (A0499)
Anne Swensen (A4252)
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Suite 1100
Salt Lake City, Utah 84111

Stephen C. Ward (A3384)
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84111

Attorneys for Defendant-Respondent

FILED
AUG 3 1989
Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE

STATE OF UTAH

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Anne Swensen (A4252)
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Suite 1100
Salt Lake City, Utah 84111

Stephen C. Ward (A3384)
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84111

Attorneys for Defendant-Respondent

TABLE OF CONTENTS

## TABLE OF AUTHORITIES

Page

### Cases



### Rules and Statutes

## ISSUES ON APPEAL

1. Did the court below properly instruct the jury on the measure of damages?

2. Was the verdict supported by substantial evidence and application of the law?

## STATEMENT OF UNDISPUTED FACTS

1. During 1984, the State of Utah entered into negotiations with plaintiffs to acquire a strip of property along the frontage of the Carpet Barn for a highway widening project. (T-14.)

2. Plaintiffs refused the State's offer to purchase the strip of property and the road widening plans were altered to go around plaintiffs' property. (T-20, T-74.)

3. The Carpet Barn structure was constructed 20 feet from the State's right-of-way line and 38 feet from the traveled way. (T-114; 275.)

4. Patrons of the Carpet Barn used the State's right-of-way to maneuver their vehicles for parking in front of the business, prior to the construction project. (T-44-45; 48.)

5. As part of the road widening project the State constructed a retaining wall across the front of plaintiffs' property along the right-of-way boundary where the property began to slope down to the Carpet Barn structures. (T-15.)

6. The wall was topped by a chain link fence which was subsequently removed. (T-36.)

7. When the construction project was completed it was discovered that the footings encroached on plaintiffs' property approximately 6 inches. (T-292.)

8. The plaintiffs' southern property boundary was 20 feet from the building structure allowing for a 20 foot wide driveway which ran from Redwood Road to the rear of the structure. (T-7; 281.)

9. The access to plaintiffs' property was unreasonable both before the construction project and after its completion. (T-234-235.)

10. At the completion of the project, parallel parking spaces were in place along the frontage of the Carpet Barn property (T. 52).

## SUMMARY OF ARGUMENT

The jury was properly instructed on the measure of severance damages, i.e., the value of the remaining property before the taking minus the value of the remaining property after the taking. The jury properly applied those instructions to the evidence offered by the State's engineer and the State's appraiser.

Plaintiffs' "theory of the case" was adequately presented by the instructions when read and considered as a whole and by the evidence offered by plaintiffs and defendant.

## RELIEF SOUGHT ON APPEAL

Defendant State of Utah seeks an order affirming the jury verdict below.

## ARGUMENT

### I

### THE JURY CORRECTLY FOLLOWED THE INSTRUCTIONS OF THE COURT WITH REGARD TO CALCULATION OF SEVERANCE DAMAGES AND THEIR VERDICT IS SUPPORTED BY THE EVIDENCE PRESENTED.

The jury considered and applied the parameters set forth in Instruction No. 15 in calculating severance damages. The instruction required consideration of the value of the remaining property before the severance of the part acquired and the value of the remaining property after severance. The figures ultimately returned by the jury included the value of the land taken, the value attributable to the construction easement, and an amount representing severance damages to the remaining property. (T-292.)

Defendant's appraiser testified that the value of the property (which included land and buildings) prior to the taking was $306,000.00, based on a combination of the market, cost and

income approaches. (T-271 to 292.) He further testified that the property had suffered a depreciation, not from physical deterioration, but from functional obsolescence which he explained to be problems inherent in the building as originally constructed. (T-280 to 281.) He applied a penalty or set-off for aspects existing in the structure which would not be built into a new structure. The functional obsolescence already existed prior to the taking. (T-293.) The value of the property was therefore the same both before and after the taking. (T-280.)

Two of the three buildings which comprised the structure on the Carpet Barn property were constructed in the early 1950's for the purpose of manufacturing munitions. (T-278.) The highest and best use at the time of construction was manufacturing. (T-282.) The highest and best use currently is qualified commercial or warehouse commercial, as distinguished from typical retail commercial property. (T-272 to 278.)

The buildings were constructed 20 feet from the south boundary of the property, allowing a 20 foot drive for access to the rear of the buildings. The 20 foot access would have been easy to close off and control and may have been so limited at the time of construction for security reasons. (T-281.)

The buildings were constructed 20 feet from the west boundary of the property (the right-of-way line) and 38 feet

from the traveled way. (T-275.) When the property was converted from manufacturing use to commercial use, the owner was faced with the problem of parking because "commercial use doesn't generally exist with parking solely in the rear." (T-282.) The problem was resolved at the time by simply using the State's right of way for parking and access or, in effect, "borrowing" the parking in the front. (T-282.) When the State elected to use its full right-of-way, the problem did not change. It was inherent in the property when its use changed from manufacturing to commercial. The State did not create the problem, but at the time it elected to utilize its existing right-of-way, the functional obsolescence which had previously existed since the time the use had changed from manufacturing to commercial became operational. (T-292 to 293.)

As testified by defendant's appraiser, the functional obsolescence was not caused by the "taking", but was caused by the change from manufacturing to commercial use. Therefore, the actual value of the property was the same before the "taking" as it was after the "taking." (T-280.)

Defendant's appraiser considered the fact that after the State used its right-of-way and plaintiffs could no longer use the State's property, the unusable strip of land in front of the buildings which had previously been used for parking, should be "cleaned up" and could be used more aesthetically by

undergoing some landscaping which he valued at $4,543.00. (T-293 to 294.) He reasoned that when plaintiffs could no longer borrow the State's property to provide parking, the best use of the remaining strip belonging to plaintiffs would be to improve the face of the building. When the retaining wall was constructed there remained a "kind of hole" in front of the building which Mr. Lang did not feel was desirable from a retail standpoint. He felt that the landscaping should be done to clean up the effects of the construction and to put the unusable strip of property to some useful purpose, which in his opinion would increase the value of the entire remaining property to at least what it had been prior to the "taking." (T-333 to 334.) He therefore determined that the difference in value of the remaining property before the "taking" and after the "taking" was $4,543.00 or the cost of making the unusable strip of land functional again. (T-324.)

Plaintiffs suggest that the entire basis for Mr. Lang's conclusion was a hearsay statement made by Mr. Beaufort, another State expert, which was later contradicted in Court. The statement pertained to the access enjoyed by plaintiffs prior to the State's utilization of the right-of-way and was taken completely out of context when quoted in plaintiffs' brief. Mr. Beaufort's testimony at trial was not inconsistent with the out-of-court statement relied upon by Mr. Lang.

Mr. Lang testified that one of the factors he considered in his analysis was a statement made by Mr. Beaufort that plaintiffs did not have access across the frontage of the property prior to the taking. (T-315.) In response to both direct examination and cross-examination, Mr. Beaufort stated that the "access" to the Carpet Barn property was unreasonable both before the "taking" (T-234) and after the "taking" (T-235). His opinion that the access before the taking was unreasonable is explained as follows:

> A. I base that upon the only access to the property; the property in general that I would recognize as an access, was the 20 foot driveway, a 20 foot driveway that will operate for commercial use and industrial use; i.e., trucks and cars at the same time, 20 foot wide access is inadequate.

(T-234.) When asked whether he was aware that customer parking was available in front of the Carpet Barn complex prior to completion of the project, Mr. Beaufort responded that he was aware that vehicles were utilizing the frontage and the right-of-way in front of the building, and that he considered that fact in arriving at his opinion. (T-235.)

Even though Mr. Beaufort was aware of the 200 foot frontage distance at the property prior to the taking, he did not consider that to be "access," and stated that despite that awareness "there was no improved access or control of access . . . ." (T-253 to 254.) It became apparent on cross-examination that

Mr. Beaufort's definition of the term access differed from that of plaintiffs' counsel:

> **Q.** Perhaps we ought to maybe define some terms. When I use the term "access" -- and I'm not an engineer, sir -- what I'm saying is: Were you made aware of the fact that for a substantial number of years, in fact, 1972 until 1985, that customers of the Carpet Barn drove from Redwood Road on to the Carpet Barn property and parked in front?
>
> **A.** Yes, I was aware that they were parking and maneuvering on the right-of-way.
>
> **Q.** That's what I mean when I say "access." In other words, you can go from point A to point B along a 200 foot frontage piece of property, correct?
>
> **A.** You're saying a 200 foot driveway?
>
> **Q.** Right, exactly. Now, you say that you were aware of that?
>
> **A.** Yes.

Mr. Sessions went on to discuss whether the area was traversible and Mr. Beaufort's testimony in that regard was partially quoted in Plaintiffs' brief. It's full context is as follows:

> **Q.** Do you know of any law, any regulation, any directive, that says that a customer of the Carpet Barn parking in 20 feet of property can't back out onto Redwood Road and proceed North or South over the State's right-of-way?
>
> **A.** If its transversible [sic], I believe there is -- there is transversible [sic]. There is no law that says you cannot do that. In the State Regulations, to my understanding, that right-of-way cannot be used for parking and maneuvering of vehicles. The landowner -- that information is available to the landowner. But if it's transversible [sic], then I'm sure that vehicles would utilize it.

Mr. Beaufort conceded that if the property were traversible, vehicles would utilize it. He did not concede that the 200 foot frontage provided legal access, improved access, or control of access and clearly distinguished between use of the property and legal "access" or improved "access" to the property.

Mr. Lang also qualified his testimony by stating:

> A. I don't know whether the State had the right to control access there or not. I'm not an expert in these things. I appraised this property the way it is. (Emphasis added.)

(T-315.) Mr. Lang was clearly referring to a legal right to access and not actual physical use of the right of way. He Stated several times that the plaintiffs borrowed public property for access to their parking (T-282) and that he did not know what they were entitled to in the law. (T-324.) His calculations were based on what they had before and what they had after (T-325), which was a problem that always existed; when parking was constricted from the time the property became retail. (T-325.)

The New Mexico Supreme Court in City of Albuquerque v. Chapman, 76 N.M. 162, 413 P.2d 204 (1966) stated:

> [O]pinion by real estate appraisers on "before and after" market values must be considered in connection with related facts on which they are based, and a satisfactory explanation must be given as to how the witness arrived at his conclusion.

Id. at 208 (citing Arkansas State Highway Comm'n v. Ptak, 236 Ark. 105, 364 S.W.2d 794 (1963)). In Chapman, supra, it was determined that the appraiser's testimony was based entirely on inaccurate dimensions and mathematical calculations as well as undeveloped reasoning. In this case both the State's appraiser and the State's engineer gave satisfactory explanations of the facts on which they relied and the bases of their calculations. Each expert testified that his opinions and calculations were based on what access the plaintiffs had before the taking and what they had after the taking. It should not be overlooked in the context of this discussion that plaintiffs' experts offered their own opinions on the issue of reasonableness of access to the property before and after the taking. (T-103.) Rebuttal and further argument were also available regarding the weight to be given such testimony.

The jury apparently agreed with the State's experts that although the property was traversible before the taking, plaintiffs did not have improved access or control of access before the taking and therefore there was no unreasonable interference, impairment or restriction of plaintiffs' right of access when the frontage strip could no longer be used for parking.

II

THE JURY RELIED ON THE APPROPRIATE MEASURE OF DAMAGES AND THE STATE'S ESTIMATE OF DAMAGES WAS ADEQUATELY SUPPORTED BY THE EVIDENCE.

The testimony of defendant's appraiser was based on a calculation of value prior to the taking minus the value after the taking, and was not based on a "cost to cure" analysis. Mr. Lang did discuss the cost to cure a functional obsolescence existing in the property prior to the taking in addressing one possible option to provide additional parking. However, the jury award did not include that figure and he did not testify that the cost to cure that functional obsolescence affected his calculation of the difference in value before and after the taking for the purposes of an award of severance damages. (T-325 to 327; 332 to 333.) Mr. Lang testified that the property had been devalued by the existence of the functional obsolescence prior to the taking. (T-280 to 281; 293.)

Plaintiffs argue that the verdict in this case is contrary to Utah law and cite Utah Dep't of Transportation v. Rayco Corp., 599 P.2d 481 (Utah 1979), stating that testimony offered by the State in this case is nearly identical to that rejected by this Court in Rayco.

In Rayco, supra, the State's estimate of severance damages, which was based on the cost of acquiring additional land and using that land for parking (cost to cure) was adopted by the

jury. This Court held that "the proper measure of severance damages to the remainder is the difference between the fair cash market value before and after the taking." Id. at 489 (citing State v. Peterson, 12 Utah 2d 317, 321, 366 P.2d 76 (1961)).

In this case the jury verdict was not based on a compromised cost to cure the plaintiffs' parking problem. All of the testimony offered with regard to cost to cure the parking problem was simply incidental testimony of calculations and alternatives to cure the pre-existing functional obsolescence and related to resolution of the parking problem. The testimony offered regarding landscaping had nothing to do with curing the parking problem but was offered as a direct alternative to increasing the value of the unusable parking strip to something useful.

In awarding $4,543.00 as severance damages, the jury adopted the opinion of defendant's expert that the value of the property had decreased by that amount when plaintiffs no longer had the benefit of the use of public property for their parking and an alternative for making the then unusable strip of land of some use and value would be to landscape it at a cost of $4,543.00. Mr. Lang did not consider that amount to be an improvement cost, but the cost to reestablish that strip of property to some useful purpose and to "clean up" after the

construction project. Mr. Lang testified that "$5,425.00 is the difference between what he had before and what he has now in my opinion." (T-324.)

The testimony offered by the State regarding remedying the parking situation was with regard to curing the preexisting functional obsolescence and was not intended as an alternative "cure" for the taking. The State did not attempt to introduce "cost to cure" evidence as a measure of severance damages for the taking and the jury did not adopt the "cost to cure" the parking problem as a measure of severance damages. Mr. Lang attempted to clarify this in response to a question posed by plaintiffs' counsel:

> A. I think you are mixing up cost to cure damages with curable functional obsolescence. And curable functional obsolescence relates to the value of the property, specifically the value of the buildings. And that occurred when the use changed from manufacturing to retail.
>
> Curable functional obsolescence is what I'm talking about here. I am saying whoever bought the property and used it for retail had a parking problem. At any time they knew the State could do what it's done. So they had to solve the problem somehow. I would say and have said that an informed buyer would have made a deduction for that fact when he bought the property. I don't know if they did. I assume they did.

(T-332, 333.) The "cost to cure" testimony related only to curing the preexisting functional obsolescence and not to the value of the property.

By awarding the cost of landscaping as severance damages, plaintiffs were put in as good a financial position as they were in before the taking in terms of the property they owned and were legally entitled to use. Plaintiffs are merely disappointed that the jury did not adopt the estimate of severance damages advocated by their appraiser.

## III

## THE JURY WAS PROPERLY INSTRUCTED ON THE LAW.

The evidence presented during the course of the trial, together with the instructions given by the Court, adequately addressed the plaintiffs' theory of the case and the appropriate measure of damages.

Plaintiffs object to the failure of the Court to give plaintiffs' proposed Instruction No. 26:

> You are instructed that the evidence in this case is that the State of Utah did not attempt, in any way, to restrict highway access of the Carpet Barn property until August, 1985.

The basis of the objection was that the instruction was necessary to give the jury a starting point to calculate severance damages. The calculation of severance damages, however, requires a determination of the value of the property before the taking as compared to the value after the taking, and plaintiffs have failed to demonstrate how proposed

Instruction No. 26 would have been relevant to their appraiser's determination of the value of the property before and after the taking. Likewise, whether the State ever attempted to utilize its right of way prior to the date of the actual taking is not relevant or significant to the calculation of severance damages. There was ample evidence presented regarding the dates of construction and the configuration of the property before and after the taking.

Furthermore, plaintiffs' proposed Instruction No. 26 was not necessary to the utilization of other instructions or the calculation of severance damages. This is amply demonstrated by the multiple references to the prohibition against unreasonable interference, impairment or restriction of right of access in the instructions given, including Nos. 18, 20, and 21. As plaintiffs recognize and state in their brief, jury instructions must be read and considered as whole.

Plaintiffs also object to the elimination of language from their proffered Instruction Nos. 25 and 28. Both of those instructions eliminated the language "established by long-term use or travel" in discussing rights of ingress and egress. Plaintiffs relied on § 27-12-134, Utah Code Ann., in formulating the instructions proffered. That statute states:

> 27-12-134. Authorities may regulate, require permit and security for excavation or construction - Limitation on authority.

> Except as otherwise provided in section 54-4-15, Utah Code Annotated, 1953, the highway authorities of the state, counties, cities, and towns are authorized to adopt regulations, and may require a permit containing reasonable terms and conditions, for the crossing, digging-up, or the placement, construction, and maintenance of approach roads, driveways, structures, poles, pipelines, conduits, sewers, ditches, culverts, facilities, or any other structures or objects of any kind or character on the public highway rights-of-way under their respective jurisdiction. Said highway authorities may require a surety bond or other reasonable security which may be forfeited in the event the regulations or the conditions of a permit are breached.
>
> The authority granted by this section shall not be exercised so as to deny reasonable ingress and egress to property adjoining a public highway except where said highway authorities have acquired such right of ingress and egress by gift, agreement, purchase, eminent domain, or otherwise or where no right of ingress or egress exists between the right-of-way and the adjoining property.

That statute does not contain the language eliminated from the instruction by the Court, and the elimination was therefore appropriate.

The instructions, when read as a whole, adequately reflect plaintiffs' theory of the case as well as the state of the law.

## IV

### THE COURT DID NOT ERR IN EXCLUDING EVIDENCE OF THE CHAIN LINK FENCE AND EVIDENCE OF ACCESS ALLOWED OTHER PROPERTIES.

As plaintiffs have indicated, they are entitled to introduce evidence of the value of the property at its highest

and best use as of the date of the taking and did so at trial through the testimony of their own experts.

Defendant is also entitled to introduce evidence of the value of the property at its highest and best use as of the date of the taking. According to defendant's appraiser, the highest and best use at the date of the taking was not for commercial property as alleged by the plaintiffs, but for qualified commercial property or warehouse commercial property. (T-277.) That opinion was based on the fact that the property had only a 20 foot drive on its south side and in order to provide parking at the front of the building as required for a highest and best use of commercial status, the plaintiffs were required to "borrow" public property.

As stipulated at the time of trial, and as the instructions reflect, the appropriate measure of damages for the taking of plaintiffs' property is the value of the remaining property before the taking minus the value of the remaining property after the taking. The chain link fence was a temporary obstruction which was removed after it was erected and prior to the time of trial. The trial court correctly determined that such evidence was irrelevant in calculating the value of the remaining property prior to the taking as compared to the value of the remaining property after the taking. In spite of that fact, the testimony adduced by plaintiffs at trial contained

multiple references to the fence, in the testimony of both Ken MacQueen (T-36) and Jack DeMass (T-101-104). That testimony also failed to demonstrate how such evidence is relevant to valuation of the property as of the date of the taking.

The Court also properly excluded evidence as to access afforded other properties. The issue of reasonable access as it impacts on determining the amount of severance damages is dependent on the particular facts and circumstances of each case. Absent a showing of "complete similarity" the circumstances of neighboring properties would be inadmissible. State v. Christensen, 371 P.2d 552, 556 (Utah 1962). In the instant case, no such showing was made with respect to elevation, setbacks, improved structures, depth and width of property, etc. As noted above, plaintiffs presented extensive evidence on the issue of reasonable access as it affects their individual parcel.

## V

## THE TRIAL COURT PROPERLY DENIED PLAINTIFFS' MOTION FOR ADDITUR OR IN THE ALTERNATIVE FOR A NEW TRIAL.

In this case, the evidence received by the Court was properly applied under the instructions given and justified the verdict returned by the jury. The State's expert testified as to his opinion regarding the value of the Carpet Barn property

and the jury adopted the opinion of the State's expert. Mr. Lang testified that the addition of landscaping to the face of the Carpet Barn property would bring the property after the taking to the same value that it possessed prior to the taking. (T-310.) The jury applied that law as to the calculation of values to the testimony of Mr. Lang and determined that the difference in value could be adequately remedied by the landscape improvement which would cost $4,543.00.

A new trial is not warranted except for some basic and compelling reason. In Uptown Appliance and Radio Company v. Flint, 249 P.2d 826 (Utah 1952), this Court Stated at p. 829:

> Jury trials are a part of the fundamental tenets of our judicial system and where, as in this case, a litigant has fully, completely and without restraint, been permitted to show his full grievance to a jury and they have conscientiously and without any showing of prejudice or other extraneous influences decided the matter, there must be some basic and compelling reasons so inherent in the evidence that the trial judge would be warranted in placing his judgment as to the result to be reached over and above that of the jury.

No such basic and compelling reasons have been established by plaintiffs' counsel. In fact, a careful review of the evidence shows at most conflicting testimony, the force and effect of which it is for the jury to weigh in arriving at a verdict.

Where conflicting evidence has been presented, if reasonable minds could have found as the jury did from the evidence

before it, that is sufficient to support the verdict. Pollesche v. Transamerica Insurance Company, 497 P.2d 236, 238 (Utah 1972).

In this case, the conflicting evidence relates to the value of plaintiffs' property before and after the "taking" of a small portion of their property. Plaintiffs argue that because the jury awarded the amount of severance damages to which Mr. Lang testified the jury misunderstood and misapplied the law as to severance damages. Mr. Lang's testimony with respect to landscaping costs as severance damages was received without objection and specifically reflected the difference in value of the property before and after the "taking", as illustrated on Exhibit 49-D, summarizing Mr. Lang's testimony. Merely because the jury rejected conflicting testimony is no indication that they misapplied the law or were influenced by inadmissible evidence.

In addition, plaintiffs' counsel during closing argument invited the jury to award Mr. Lang's proposed figures as damages if they did not adopt those proposed by plaintiffs' expert. He cannot now argue that such an award was inappropriate.

## CONCLUSION

Plaintiffs were given an opportunity to thoroughly litigate their claim at the time of trial and to receive the jury's decision thereon. The evidence submitted and the instructions propounded to the jury adequately reflected plaintiffs' theory of the case. This Court should not disturb the jury's conclusion merely on the basis that reasonable minds might differ as to the outcome. Plaintiffs have had a full and fair opportunity to present all evidence and arguments in support of their position to the jury, and the jury verdict should not be disturbed.

The trial Court also appropriately denied plaintiffs' request for an additur. The Court is not empowered to entertain a motion for an additur when the damages are not so inadequate as to indicate a disregard of the evidence by the jury.

The jury's award was well within the testimony and evidence presented at trial, the jury was adequately instructed, and its verdict should be affirmed.

Respectfully submitted this 30th day of August, 1988.

SNOW, CHRISTENSEN & MARTINEAU

By Jody K Burnett
Jody K Burnett
Attorneys for Defendant

SCMAXS215

# ADDENDUM

**PLAINTIFFS' PROPOSED INSTRUCTIONS**

Nos. 25, 26, 28

INSTRUCTION NO. 25

The State has authority to adopt and enforce regulations governing the use of and access to public highway rights of way, including regulations governing the location, number and width of driveways providing access to and from adjoining land. However, the State is prohibited by law from exercising this authority in a way that unreasonably interferes with or impairs an established right of ingress and egress to property adjoining a public highway.

Where an owner of adjoining land has rights of ingress and egress to a public highway ~~established by long-time use or travel~~, and those rights are unreasonably impaired by the adoption of State regulations or the enforcement of those regulations, that owner is entitled to just compensation by way of severance damages for the unreasonable restriction of his right of access.

Utah Code Ann. § 27-12-134

given as modified.

INSTRUCTION NO. 20

You are instructed that the evidence in this case is that the State of Utah did not attempt in any way to restrict highway access of the Carpet Barn property until August 1985.

not given

INSTRUCTION NO. 25

The rights of access, light, and air are easements appurtenant to the land of an abutting owner on a street; they constitute property rights forming part of the owner's estate. These substantial property rights, although subject to reasonable regulation, may not be taken away or unreasonably impaired by the State without the payment of just compensation.

Where, in connection with an actual taking of an abutting property owner's property, the erection of a permanent structure as a part of a public highway results in the impairment of or damage to the abutting property owner's easements of access, light, and air ~~established by long time travel or use,~~ that damage or impairment are relevant factors properly considered in determining severance damages.

Utah State Road Commission vs. Miya, 526 P.2d 926 (Utah 1974);

Utah Road Commission vs. Hansen, 14 Utah 2d 305, 383 P.2d 917 (1963).

Given as read

INSTRUCTIONS GIVEN

INSTRUCTION NO. 20

The State has authority to adopt and enforce regulations governing the use of and access to public highway rights of way, including regulations governing the location, number and width of driveways providing access to and from adjoining land. However, the State is prohibited by law from exercising this authority in a way that unreasonably interferes with or impairs an established right of ingress and egress to property adjoining a public highway. NO PROBLEM

Where an owner of adjoining land has rights of ingress and egress to a public highway and those rights are unreasonably impaired by the adoption of State regulations or the enforcement of those regulations, that owner is entitled to just compensation by way of severance damages for the unreasonable restriction of his right of access.

INSTRUCTION NO. 21

The rights of access, light, and air are easements appurtenant to the land of an abutting owner on a street; they constitute property rights forming part of the owner's estate. These substantial property rights, although subject to reasonable regulation, may not be taken away or unreasonably impaired by the State without the payment of just compensation.

Where, in connection with an actual taking of an abutting property owner's property, the erection of a permanent structure as a part of a public highway results in the impairment of or damage to the abutting property owner's easements of access, light, and air, that damage or impairment are relevant factors properly considered in determining severance damages.

dl

EXHIBIT 49D

# WILLIAM R. LANG, MAI

BEFORE VALUE

| | |
|---|---|
| LAND | $ 211,000 |
| IMPROVEMENTS | 95,000 |
| TOTAL BEFORE VALUE | $ 306,000 |
| TOTAL AFTER VALUE | $ 300,575 |
| VALUE OF PART TAKEN | $ 289 |
| TEMPORARY EASEMENT | $ 578 |
| LANDSCAPING | $ 4,543 |
| TOTAL AWARD | $ 5,410 |

SUMMARY

ROUNDED, $ 5,425

| | |
|---|---|
| TOTAL BEFORE VALUE | $ 306,000 |
| LESS TOTAL AFTER VALUE | $ 300,575 |
| EQUALS TOTAL AWARD | $ 5,425 |

CERTIFICATE OF SERVICE

Jody K Burnett of SNOW, CHRISTENSEN & MARTINEAU, attorneys for defendant State of Utah, hereby certifies that on the 30th day of August, 1988, he served upon all counsel of record the following:

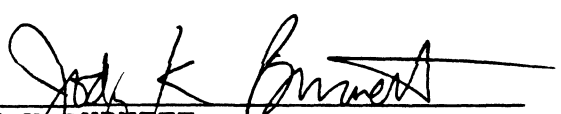
BRIEF OF RESPONDENT

by mailing a true and correct copy of the same, postage prepaid, to their attorneys at the following addresses:

Clark W. Sessions
SESSIONS & MOORE
Attorneys for Plaintiff-Appellants
400 First Federal Plaza
505 East 200 South
Salt Lake City, Utah 84102

Stephen C. Ward, Attorney for Defendant-Respondent
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84111

SNOW, CHRISTENSEN & MARTINEAU



JODY K BURNETT
Attorneys for Defendant-
Respondent